

OLC INDEX 10001

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5 October 1978

MEMORANDUM FOR THE RECORD

SUBJECT: Meeting of Executive Branch Agencies to Discuss the Senate Foreign Relations Subcommittee on International Operations' Investigation of Foreign Intelligence Activities in the U.S., 5 October 1978

25X1 1. The meeting was called by Major Robert Kimmet, of the National Security Council staff, to discuss problems raised by the Subcommittee's continuing investigation. Representatives from the Agency, NSA, and the Departments of State, Justice, and Defense were present. A list of attendees is attached.

25X1 2. Kimmet said that the immediate impetus for the meeting was the 3 October letter from Subcommittee Chairman George S. McGovern (D., S. Dak.) to the DCI, a copy of which had been sent to President Carter. Kimmet noted, however, that the NSC staff had intended to involve itself in the Subcommittee's investigation in any case since it had become apparent that NSC documents and decision-making processes would eventually become directly involved. Kimmet noted that the NSC staff sees some similarities between the Subcommittee's investigation and recent problems between the Executive Branch and Senator Henry Jackson's (D., Wash.) Senate Governmental Affairs Permanent Subcommittee on Investigations with regard to the Dresser Industries export licensing controversy. Kimmet said that the NSC wanted to involve itself at an earlier stage in the McGovern Subcommittee's investigation than had been the case in the Dresser affair.

25X1 3. Representatives from the various agencies described for Kimmet their impressions of where the Subcommittee's investigation was headed and their procedural arrangements with Senate Foreign Relations Legal Counsel Michael Glennon. It was agreed that Glennon was attempting to gather evidence to support the notion that the Foreign Agents Registration Act and related statutory provisions were not functioning as intended because of a conscious Executive Branch effort to frustrate proper enforcement and to condone illegal activities by foreign intelligence services for reasons of political expediency and for the sake of maintaining intelligence liaison relationships.

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25X1 4. Other significant comments included the State Department's observation that it expected a confrontation with the Subcommittee over the relationship between Section 15 (b) of the Basic Authority of the Department of State and the Third Agency Rule. In this connection, Kimmet stated that he considered the statement inserted into the Congressional Record by Senator McGovern at the time of the Senate's adoption of the Conference Report on the FY79 State Department Authorization bill to be a gross breach of the understanding about the rule reached by the Executive and Legislative Branches at the House-Senate conference. The State Department representatives assured the group that the Department would not take any action on its own in contravention of the principles embodied in the Third Agency Rule.

25X1 5. Kimmet explained that the NSC staff wanted to ensure that Executive Branch dealings with the Subcommittee were coordinated, and that it would be impossible for Glennon to play one Agency off against another. Kimmet noted, however, that the White House also had to consider the fact that important legislative equities were at stake during the period remaining before Congress adjourned. He explained that the NSC staff did not want to appear to be obstructing the Subcommittee's investigation.

25X1 6. Kimmet said that the NSC staff wanted the various agencies to be as responsive as possible to the Subcommittee's requests, without jeopardizing important Executive Branch interests. Kimmet said that he and NSC staff officer Sam Hloskinson would be meeting later in the day with Zbigniew Brzezinski and David Aaron, NSC, to discuss the entire situation. One option that would be considered would be an approach to the SSCI, the Senate Judiciary Committee, and the full Foreign Relations Committee, with a view toward avoiding parallel investigations by Senate entities having overlapping jurisdictions and toward reaching an understanding between these Committees and the White House on the nature and scope of continued Congressional inquiries. Such an approach would be coupled with the message that: the White House was appreciative of the McGovern Subcommittee's efforts to point out areas in which Executive Branch performance could be improved; that it was essential to avoid duplicative inquiries into sensitive areas; and that it would be best to proceed in a cooperative spirit in which both the Executive and Legislative Branches fully coordinated their efforts.

25X1 7. The undersigned pointed out that such an approach would run the risk of increased Congressional interest and participation in an even broader investigation, in which Glennon might still play the leading role, since SSCI and Judiciary Committee participation would not deprive the International Operations Subcommittee of its subject

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matter jurisdiction. State Department representatives expressed similar concerns and Kimmet admitted that such a result was a possibility. Kimmet said that the White House would not take any initiative on the Hill along the lines outlined above without further consultation with concerned Executive Branch agencies.

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8. The discussion then turned to the most immediate problem at hand, the need for the Agency to reply to Senator McGovern's letter of 3 October. The undersigned explained the Agency's concerns about the adverse effects that answering the Subcommittee's questions could have on intelligence liaison relationships. Problems raised by the Subcommittee's earlier request that the Agency identify certain foreign intelligence service personnel in the U.S. were also discussed. The fact that it would probably be impossible to prevent the eventual public disclosure of at least some of the Agency information provided to the Subcommittee was noted as well. Kimmet said that he understood the issues involved and hoped to provide us with White House guidance on a reply to McGovern as soon as he could, possibly within the next several days.

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9. With regard to Glennon's request to resume Agency briefings on certain foreign intelligence services with a transcriber present, Kimmet said that he believed the sessions should go forward. Kimmet again noted that the NSC staff wanted to avoid confrontation with the Subcommittee if possible, and that the individual agencies and departments should continue to be as forthcoming as they could without prejudicing their own equities or those of sister agencies. The Justice Department representative noted that Glennon had told him earlier in the week that if the Agency did not agree to resume the briefings, the Subcommittee would move to issue a subpoena in connection with the hearings it plans for early November. Kimmet

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Assistant Legislative Counsel

Attachment

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25X1 Distribution:

Original - OLC Subject w/att.

1-[redacted] w/att.

1-OGC [redacted] w/att.

1-OLC Chrono w/o att.

25X1 OLC:GMC:mlg (5 Oct 1978)

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Robert Kimmet	NSC Staff
[Redacted]	CIA/OLC
	CIA/OGC
George Calhoun	DOJ
[Redacted]	NSA
Brent Rushforth	DOD
Jeff Smith	State
Ted Heavner	State
Lee Marks	State

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